

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

STEVE P. SHULTZABERGER,

Plaintiff,

v.

Case No. \_\_\_\_\_

THOMAS E. HALL and RENE HALL,  
next of friends to MADISON R.  
WALTH, and STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY,

Defendants.

**NOTICE OF REMOVAL**

Defendant, State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”), by and through its counsel of record, Miller Stratvert P.A. (Todd A. Schwarz and Jesika M. Ulibarri), hereby gives notice of removal of this matter to the United States District Court for the District of New Mexico as follows:

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant State Farm hereby gives notice of removal of all counts and claims asserted by the Plaintiff in the civil action filed in the Twelfth Judicial District, County of Lincoln, State of New Mexico, styled: *Steve Shultzaberger v. Thomas E. Hall and Rene Hall, next of friends to Madison R. Walth, and State Farm Mutual Automobile Insurance Company*; Twelfth Judicial District Cause No. D-1226-CV-2016-00039 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on State Farm to date are attached hereto as Exhibit 1 (Summons and copy of Acceptance of Service from Office of Superintendent of Insurance) and Exhibit 2 (copy of the below-defined Complaint).

2. Plaintiff's original filing, which is titled as "Complaint" (hereinafter the "Complaint"), was filed in the Twelfth Judicial District Court on February 19, 2016. The Complaint and Summons were served on Defendant State Farm through the State of New Mexico, Office of Superintendent of Insurance on September 20, 2017. *See* Exhibit 1. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) within thirty (30) days of service of the Complaint and Summons.

3. Defendant State Farm states that this is an action of a civil nature in which the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the sole Plaintiff and the sole real Defendant, and the amount in controversy exceeds \$75,000.00.

4. The Complaint asserts that Plaintiff is a resident of Lincoln County, New Mexico. *See* Exhibit 2, Complaint ¶ 1.

5. State Farm is a resident of the State of Illinois, as it is incorporated in Illinois and has its principal place of business in the State of Illinois. *See* Defendant's Corporate Disclosure Statement filed concurrently herewith.

6. The tortfeasors, Thomas E. Hall and Rene Hall, as next friends of Madison R. Walth, are named in the caption on Plaintiff's Complaint. However, Plaintiff settled his claims with them, signed a complete release of all claims, and dismissed his suit against them. Therefore, they are not parties to this action. *See* Release of All Claims, attached hereto as Exhibit 3, and Order of Dismissal with Prejudice, attached hereto as Exhibit 4.

7. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

8. The following is established on the face of the Complaint. This case involves an actual controversy between Plaintiff, on the one hand, and Defendant, on the other hand,

regarding an alleged motor vehicle collision and alleged resulting personal injuries. Plaintiff alleges that she was covered by an uninsured/underinsured motorist insurance policy issued by State Farm and that suffered personal injuries due to a vehicle collision on or about May 23, 2013 that was allegedly caused by Madison Walth. *See* Complaint ¶¶ 4-11, 15.

9. Plaintiff alleges that he has “suffered physical injuries, incurred medical expenses, loss of earnings, and property damage”. Complaint ¶ 11.

10. Plaintiff alleges that State Farm violated the Unfair Trade Practices Act, Fraud Act and insurance code. Complaint ¶¶ 15-20.

11. Plaintiff further alleges that he is entitled to attorney fees and punitive damages against State Farm. Complaint at 4.

12. Without admitting any of the foregoing allegations, Defendant State Farm respectfully submits that the aggregate “value” of what Plaintiff seeks to recover in this case, including Plaintiff’s claim for punitive damages, exceeds \$75,000.00. *See Wiatt v. State Farm Ins. Co.*, 560 F. Supp. 2d 1068, 1075 (D.N.M. 2007) (providing court may “aggregate actual damages, punitive damages, attorneys’ fees, and statutorily imposed penalties” when determining whether jurisdictional amount requirement is satisfied).

13. The United States Supreme Court has recently clarified that “as specified in § 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

14. Notice is being provided to Plaintiff of the filing of this Notice as required by 28 U.S.C. § 1446(d).

15. A copy of this Notice will be filed with the Clerk for the District Court for Lincoln County in the State Court Action as required under 28 U.S.C. § 1446(d).

16. State Farm demands a jury of twelve.

Respectfully submitted,

MILLER STRATVERT P.A.

By /s/ Todd A. Schwarz

Todd A. Schwarz

Jesika M. Ulibarri

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 12<sup>th</sup> day of October, 2017, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following participating CM/ECF counsel to be served with same by electronic means and copies were also served via U.S. Mail to:

Charles E. Hawthorne  
P.O. Box 2387  
Ruidoso, NM 88355  
Telephone: (505) 717-7922

/s/ Todd A. Schwarz  
Todd A. Schwarz

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